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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
 JEREMY DAVIS, CHRISTOPHER
 CASTILLO, and MONIQUE TRUJILLO
 individually and on behalf of all others
 similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**[PROPOSED] ORDER GRANTING
 MOTION TO STRIKE NON-RETAINED
 EXPERT DECLARATIONS FOR WHOM
 GOOGLE PROVIDED NO EXPERT
 REPORT**

Judge: Hon. Yvonne Gonzalez Rogers
 Date: September 27, 2022
 Time: 2:00 p.m.
 Location: Courtroom 1 – 4th Floor

Before the Court is Plaintiffs’ motion to strike the declarations of Google’s non-retained employee-experts George Levitte, Glenn Berntson, Steve Ganem, and Jonathan McPhie, filed with Google’s opposition to Plaintiffs’ motion for class certification at Dkts. 666-19 (Levitte), 666-18 (Berntson), 666-17 (Ganem), and 666-12 (McPhie) (the “Motion to Strike”).

Under this Court’s Standing Order in Civil Cases, *all* expert witnesses—“*whether retained or non-retained*”—“must provide written reports in compliance with Federal Rule of Civil Procedure 26(a)(2)(B).” Dkt. 392 ¶ 10 (emphasis added). On February 11, 2022, the Court reminded the parties that this order was in effect and must be followed. Feb. 11, 2022 Hr’g Tr. at 11:13-14. And on March 22, 2022, the Court issued a Case Management and Pretrial Order making clear that the deadlines for expert reports under Rule 26(a)(2)(B) applied to “All Experts, Retained *and Non-Retained*.” Dkt. 465 at 1 (emphasis added).

Despite the Court’s clear and unambiguous orders and instructions, Google improperly attached to its opposition to class certification declarations from four non-retained employee-experts who never submitted any expert report. Those four declarations very clearly fall within the scope of the Court’s Standing Order:

- **George Levitte:** Mr. Levitte declares himself “a *subject matter expert* for all ad monetization features of Ad Manager” and then proceeds to offer various expert opinions which Google uses to rebut Plaintiffs’ expert Mr. Lasinski’s unjust enrichment and apportionment opinions. Dkt. 666-12 ¶ 2 (emphasis added).
- **Glenn Berntson:** Dr. Berntson expressly seeks to *rebut Plaintiffs’ technical expert Mr. Hochman*, purporting to “address some errors and false assumptions made in Mr. Jonathan Hochman’s expert report, submitted in this case,” including with respect to Dr. Berntson’s opinions about the “reliability” of Google’s “maybe_chrome_incognito” detection bit. Dkt. 666-17 ¶¶ 1, 41 (emphasis added).
- **Steve Ganem:** Mr. Ganem also presents himself as an expert, providing technical opinions regarding Google’s data and data systems and opining, for example, that it would be “impossible” to make specific revenue and profits calculations using Google’s data. Dkt. 666 Ex. 18 ¶ 36.
- **Jonathan McPhie:** Mr. McPhie also offers expert testimony, as shown by his repeated use of “I am informed” to introduce his opinions, including for example regarding how “Incognito provides privacy” and then opining that “Google’s disclosures about Incognito mode, and private browsing generally,

are *consistent with the features I am informed Incognito mode provides*.” Dkt. 666-19 ¶¶ 3-5, 72 (emphasis added).

“[T]he testimony [Google] seek[s] to offer . . . is excluded on the grounds that [Google] failed to disclose these experts timely or provide full expert reports as required by Federal Rule of Civil Procedure 26(a)(2).” *Trulove v. D’Amico*, 2018 WL 1090248, at *2 (N.D. Cal. Feb. 27, 2018) (Gonzalez Rogers, J.) (quoting Fed. R. Civ. P. 26(a)(2)(C)) (excluding unretained experts for failing to provide expert disclosures required by Rule 26(a), explaining that exclusion is “self-executing” and “automatic” under Rule 37(c)(1)).

It is therefore

ORDERED, ADJUDGED, and DECREED:

1. The Court **GRANTS** Plaintiffs’ Motion to Strike.
2. The Court strikes the following Google-employee expert declarations filed with Google’s opposition to Plaintiffs’ motion for class certification: George Levitte (Dkt. 666-19), Glenn Berntson (666-18), Steve Ganem (666-17), and Jonathan McPhie (Dkt. 666-12).

IT IS SO ORDERED.

Dated: _____

The Honorable Yvonne Gonzalez Rogers
United States District Judge